Reg. No. GR/RNP/GOA/32

RNI No. GOAENG/2002/6410

Panaji, 12th December, 2007 (Agrahayana 21, 1929)

SERIES II No. 36

OFFICIAL GAZETTE

GOVERNMENT OF GOA

SUPPLEMENT

GOVERNMENT OF GOA

Department of Labour

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Notification

No. 28/18/2007-LAB/839

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 31-7-2007 in reference No. IT/44/95 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, August, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Ref. No. IT/44/95

Rajendra B. Harmalkar,
Khalapwada, Canca, Parra,
Bardez-Goa. ... Workman/Party I

V/s

M/s. Goa Electronics Ltd.,
Tivim Industrial Estate,
Mapusa, Bardez-Goa. ... Employer/Party II

Party I is represented by Adv. V. Tari.

Party II is represented by Adv. A. V. Nigalye.

AWARD

(Passed on this 31st day of July, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts giving rise to the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under order dated 7-9-95 has referred to this Industrial Tribunal following dispute for adjudication:-

i. Whether the action of the management of M/s. Goa Electronics Limited, Mapusa Industrial Estate, Mapusa in terminating the services of Shri Rajendra Harmalkar w.e.f. 28-9-1992 is legal and justified ?

ii. If not, to what relief the workman is entitled ?

2. In response to notices, both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 5-1-96 at Exb. 4. It appears from claim statement that the Party I was appointed as Helper in establishment of the Party II under its letter dated 12-9-85. The Party I was confirmed in service w.e.f. 1-4-86. The Party II issued charge-sheet against the Party I on 19-11-1991 on the following grounds:

i. willful insubordination, disobedience of any lawful and/or reasonable order of the superiors or instigation of such insubordination or disobedience;

ii. abetting, insisting, instigating or acting in furtherance thereof;

iii. stoppage of work whether alone or in combination with others or resorting to

obstructions aimed at or resulting in paralyzing the normal conduct of the company;

iv. wrongful interference with work of other employees;

v. commission of any act, subversive of discipline or good behaviour on the premises of the establishment or elsewhere; and,

vi. willful interference with the work of other workmen.

3. Again on 20-11-1991, the Party II issued another charge-sheet against the Party I on following grounds:

i. habitual late attendance;

ii. habitual breach of any standing order or any law applicable to the establishment or any rule made thereunder;

iii. commission of any act subversive of discipline or good behaviour on the premises of the establishment; and

iv. habitual breach of any act or omission referred to in the Standing Order No. 23 of the Company's Standing Orders.

4. The grounds on which the Party II issued the charge-sheets on 19-11-1991 and 20-11-1991 against the Party I were treated as acts of misconducts enumerated in the company's certified standing orders.

The Party I filed his replies on 18-12-1991 and 26-12-1991 in answer to the allegations levelled against him in the charge-sheets issued on 19-11-1991 and on 20-11-1991 respectively. Inquiry Officer after holding inquiry exonerated the Party I from all the allegations of misconducts which were levelled against the Party I in the charge-sheet issued on 19-11-1991. Only the allegation of habitual late attendance amounting to misconduct as stated in the charge-sheet issued on 20-11-1991 is proved against the Party I. The findings which are recorded by the Inquiry Officer are communicated to the Party II under report dated 29-6-92. On basis of the findings, Managing Director if the Party II issued show cause notice and called upon the Party I to show cause as to why the Party I should not be awarded the punishment of dismissal. The Party I by giving reply to the show cause notice denied that he has committed misconduct in the past. He brought to notice of the Party II under this reply that the Inquiry Officer did not appreciate evidence properly while arriving at the said findings, that the Inquiry Officer misconstrued provisions of Certified Standing Orders while interpreting misconduct in the shape of habitual late attendance and that the punishment sought to be inflicted upon him is grossly disproportionate to gravity of the charge proved against him. The Party II did not satisfy with reply given by the Party I and ultimately, terminated services of the Party I under its letter dated 28-9-92. The Party I has challenged action of the Party II in terminating his service on the following grounds:-

i. the Inquiry Officer was appointed to make inquiry only into the allegations made in the charge-sheet issued on 19-11-1991;

ii. the Inquiry Officer had no jurisdiction to inquire into the allegations stated in the charge-sheet issued on 20-11-1991;

iii. to constitute the act of misconduct of late attendance, it was necessary that the employee is shut out and treated as absent for having attended the duty late. The Party I was never shut out and treated as absent and therefore, it cannot be said that he is guilty of misconduct which is in the shape of late attendance;

iv. management of the Party II in its discretionary exercise allowed the Party I to work even after late attendance, which means that the late attendance is condoned;

v. combined reading of show cause notice and final order of termination of service of Party I indicates that the Party II had taken decision prior to the date of issuance of the show cause notice, to terminate service of Party I;

vi. past misconduct was not stated in the second show cause notice as a result, the Party I was deprived of his right to submit explanation;

vii. the order of termination of service of the Party I is cryptic in nature and bereft of all requirements of law;

viii. entire exercise carried out by the Party II, resulting in termination of service of the Party I is vindictive and smacks of malafide; and lastly,

ix. the Inquiry Officer took into consideration extraneous matters and neglected relevant matters as a result the inquiry report stands vitiated.

5. By presenting the claim application, the Party I has prayed for setting aside order of termination of his service and for direction to the management of the Party II to reinstate him in service with retrospective effect, with backwages and with consequential benefits.

6. The Party II filed its written statement on 4-3-1996 at Exb. 6. It appears from written statement that the Party II is a company duly registered under provisions of the Indian Companies Act, 1956. Head Office of the Party II is at Mapusa. The Party II is carrying on business of manufacturing television sets and other products in its factory situated at Mapusa Industrial Estate. The Party I was appointed as a Helper in establishment of the Party II w.e.f. 1-10-1995. The Party I was confirmed in service w.e.f. 1-4-1986. Service record of the Party I from the date of his appointment till the date of termination of his service is very bad

and blemished. He was involved in several acts of misconducts and misbehaviour for which penalties were imposed upon him. Some of the instances of his misconduct and misbehaviour are as follows:-

i. on 27-7-1989, he was found playing cards and gambling in factory premises. He was served with a charge-sheet. Inquiry was held against him. On conclusion of the inquiry. He made application on 8-8-89 to Managing Director of the Party II, admitted the charge levelled against him and prayed for apology. He requested to treat period of his suspension from 4-8-89 to 8-8-89 as punishment. He assured the management that he will not commit such misconduct in future. The Party II considering apology tendered and assurance of good behaviour given by the Party I took lenient view and treated his suspension period as a penalty i.e. suspension without wages;

ii. another charge-sheet dated 8-12-1990 was issued against the Party I in which there were allegations of disobedience, loitering, wasting of time, disorderly and indecent behaviour and of use of abusive language etc. An inquiry was held into these allegations by giving opportunity to the Party I. He was held guilty in the inquiry. The Party II issued show cause notice against the Party I indicating that, management had taken decision to give him one more opportunity by awarding punishment of suspension without wages. The Party I agreed with the proposed penalty and assured to work sincerely;

iii. the Party I has committed several other acts of disobedience, indecent behaviour and of using abusive language in premises of establishment of the Party II, of tempering with record to show himself present when he was absent from duty, unauthorized absence and of late attendance for which he is given warning from time to time.

7. Further, it appears from written statement that though the Party I was involved in several acts of misconducts during his service tenure for which he was deserving penalty of dismissal from service, he was retained in service by imposing lesser punishment in order to give opportunity to improve himself. Inspite of that, the Party I continued with acts of misbehaviour and misconducts. Inquiry held into the allegations stated in the charge-sheets dated 16-11-1991 and 20-11-1991 is fair, proper and in accordance with principles of natural justice. The Party II after giving opportunity to the Party I to show cause, terminated service of the Party I by its letter dated 28-9-1992. While terminating service of the Party I, his past record is also considered. Termination of his service is legal and justified. On these and the above grounds, the Party II has prayed for holding that the termination of service of Party I is legal and justified and that the Party I is not entitled to any of the reliefs as claimed by him.

8. The Party I submitted his affidavit in rejoinder on 26-4-1996 at Exb. 7. In short, it appears from affidavit in rejoinder that he denied all contentions which are raised by the Party II in its written statement and which are adverse to his interest. He has requested to grant the reliefs claimed by him in the claim statement.

9. On basis of pleadings, the then learned Presiding Officer framed issues on 11-7-96 at Exb. 8. The issues are as follows:-

1. Whether the Party I proves that the domestic inquiry held against him is not legal and proper ?
2. Whether the charges of misconduct levelled against the Party I are proved to the satisfaction of the Tribunal by acceptable evidence ?
3. Whether the Party I proves that the action of the Party II in terminating his service w.e.f. 28-9-92 is illegal and unjustified ?
4. Whether the Party I is entitled to any relief ?
5. What Award ?

10. The then learned Presiding Officer treated the issues No. 1 and 2 as preliminary issues. The Party I examined himself at Exb. 11 and at Exb.15, while the Party II examined the Inquiry Officer, Mr. P. J. Kamat at Exb. 12 by whom the inquiry was conducted into the allegations made against the Party I in the charge-sheet issued on 19-11-91 and 20-11-91. The then learned Presiding Officer after considering evidence led by both parties and after hearing their respective learned Advocates, recorded findings on the preliminary issues under reasoned order dated 11-12-2002, as follows:-

1. Issue No. 1 :- In the negative
2. Issue No. 2 :- In the affirmative

The then learned Presiding Officer by the said order dated 11-12-2002 held that the domestic inquiry held against the workman Shri Rajendra Harmalkar (Party I) is legal and proper. He further held that the charge of habitually late in attending work contained in the charge-sheet dated 20-11-91 is proved against the workman Shri Rajendra Harmalkar (Party I) and the same constitutes misconduct as per para 20 (8) of the Certified Standing Orders.

11. The findings recorded by the then learned Presiding Officer in the preliminary issues No. 1 and 2 are not challenged by the Party I. It follows that these findings have attained finality and therefore, those are binding on both parties.

12. Since the issues No. 1 and 2 are finally decided by the then learned Presiding Officer as preliminary issues, I am required to decide only the remaining issues which are issues number 3 to 5. My findings on the issues number 3 to 5 are as follows:-

Issue No. 3:- In negative
Issue No. 4:- In negative
Issue No. 5:- As per final order

REASONS

13. *Issue No. 3:-* The Party II is a company duly registered under Indian Companies Act, 1956. It has registered office at Mapusa which is in the State of Goa. It is running business of manufacturing television sets and other products in its factory situated at Mapusa Industrial Estate, Mapusa, Goa. The Party I was appointed as Helper in establishment of the Party II under its letter dated 12-9-85. The Party I joined service as Helper w.e.f. 1-10-1985. He was confirmed in service w.e.f. 1-4-86 by the Party II under its confirmation letter dated 18-4-1986. The Party II held inquiry into the allegations of misconduct against the Party I and which were stated in the charge-sheet issued on 19-11-1991 and 20-11-1991. Xerox copies of the charge-sheets are at Exb. W-3 and at Exb. W-4 respectively. Advocate P. J. Kamat was appointed as Inquiry Officer. It is admitted that the Inquiry Officer recorded finding that the charge of habitual late attendance stated in the charge-sheet dated 20-11-1991 is proved against the Party I. He exonerated the Party I from all the other charges which were levelled against the Party I in both the charge-sheets dated 19-11-91 and 20-11-91 for want of evidence. The Party II by issuing notice dated 6-8-92 called upon the Party I to show cause as to why he should not be awarded punishment of dismissal from service. The Party I gave reply to this notice on 26-8-92. The Party II did not satisfy with the reply. Thereafter, the Party II by its letter dated 28-9-92 terminated service of the Party I in the interest of general discipline in the service. Xerox copies of the show cause notice dated 6-8-92 and of the reply dated 26-8-92 are alongwith Exhibit W-6.

14. Combined reading of the show cause notice dated 6-7-92 and of the letter of termination dated 28-6-92 goes to show that the Party II terminated service of the Party I on the ground of his misconduct which was in the form of habitual late attendance and also by considering his past record. Learned Advocate appearing on behalf of the Party I vehemently argued that the Inquiry Officer was authorized to inquire into the allegations stated in the charge-sheet dated 19-11-91 and not into those stated in the charge-sheet dated 20-11-91. Allegations which are stated in the charge-sheet dated 19-11-91 are not proved. Allegations, except that of misconduct in the form of habitual late attendance and which are stated in the charge-sheet dated 20-11-91 are also not proved. The finding which is recorded on the allegation of misconduct against the Party I and which are stated in the charge-sheet dated 20-11-91 by the Inquiry Officer is without jurisdiction. Such finding should not be taken into consideration. Therefore, according to the learned Advocate, termination of service of Party I, which is based on such type of finding cannot be said to be legal and justified.

15. It is true that the Inquiry Officer was not specially authorized to make inquiry into the allegations stated in the charge-sheet issued on 20-11-91 against the Party I. It is not known and it is also not pointed out by the learned Advocate of the Party I as to whether the Party I took objection to make inquiry by the Inquiry Officer into the allegations levelled against him in the charge-sheet dated 20-11-91. Therefore, in my view, the Party I is not entitled to make grievance at this stage against the finding recorded by the Inquiry Officer. Moreover, the then learned Presiding Officer by reasoned order dated 11-12-2002, alluded Supra, endorsed the finding recorded by the Inquiry Officer against the Party I. The findings recorded by the Presiding Officer, as stated earlier, is not challenged. I, therefore, do not accept the arguments advanced by the learned Advocate of the Party I.

16. Termination of service of the Party I is challenged mainly on the ground that the inquiry held against him is not legal and proper. Finding recorded by the then learned Presiding Officer on preliminary issue No. 1 under the order dated 11-12-2002 does not permit me to accept the ground pleaded by the Party I to challenge the termination of his service as illegal and unjustified. The Party I did not plead any other ground to challenge order of termination of his service.

17. Xerox copy of draft standing orders applicable to workmen of the Party II is produced at Exb. W-7. Clause 20(1)(8) makes it clear that habitual late attendance is one of the acts which amounts to misconduct. Clause 21 © further lays down that:

> *"No order of dismissal under clause 21(a) of this standing order shall be made except after holding inquiry against the workman concerned in respect of alleged misconducts and giving him the opportunity to explain in the manner set forth in clauses below the circumstances alleged against him."*

The Party II before termination of service of Party I, has complied with the requirements laid down by clause 21 © of the certified standing orders applicable to its workmen.

18. Learned Advocate of the Party I pointed out in his arguments that the charge which is proved against the Party I is only of the misconduct which is in the form of habitual late attendance. Such type of the charge does not warrant dismissal from the service. The punishment which is imposed by the Party II and which is in the nature of termination of service of the Party I is not commensurate with the guilt. The Party I is entitled to lesser punishment. On this ground also, according to the learned Advocate, it will have to be held that termination of service of the Party I is illegal and unjustified.

19. To counter arguments advanced by the learned Advocate of the Party I, learned Advocate of the Party II argued that habitual late attendance of workmen amounts to misconduct which enables the employer to terminate service of the workmen as per provisions contained in Certified Standing Orders applicable to the workmen. In the present case, past history of the Party I speaks that the Party I was

involved for several times in the acts of misconduct and misbehaviour. Inspite of giving sufficient opportunities, the Party I did not make improvements in his behaviour. The Party II while terminating service of the Party I has taken into consideration not only the finding recorded against the Party I by the Inquiry Officer, but also past history of the Party I. If the Party I who is frequently involved in the acts of misconduct and misbehaviour is retained in service, that will certainly be prejudicial to the interest of the Party II. Therefore, in his opinion, the punishment awarded by way of termination of service on the Party I is proportionate and same is legal and justified.

20. It is a fundamental principle of justice that the punishment should be commensurate with the guilt. *Judex acquitatem semper spectare debot* i.e. a Judge ought always to have equity before his eyes. The Party I has admitted in his cross examination Exb. 15 that he had received charge-sheet of which carbon copy is at Exb. E-2. The charge-sheet is dated 27-7-1989. It appears from the charge-sheet that there were allegations against the Party I of commission of act subversive of discipline or good behaviour, gambling in premises of the company, unauthorized use of the company's property and of wasting time during working hours. The Party II had suspended the Party I for the period from 4-8-89 to 8-8-89 by way of punishment. The Party I under letter dated 8-8-89 addressed to Managing Director of the Party I accepted the punishment of suspension imposed upon him. The letter is at Exb. E-3. The Party II in response to letter dated 8-8-89 of the Party I treated the suspension period as suspension without wages. Carbon copy of the letter given in this regard to the Party I by the Party II is at Exb. E-4. There is carbon copy of letter dated 6-12-89 at Exb. E-5 whereunder the Party II informed to the Party I that his work is much below average and it needs to be improved. The Party II issued show cause notice on 6-12-1989 to the Party I. Carbon copy of the show cause notice is at Exb. E-6. It appears therefrom that, on first of December, 1989, the Party I was told by the Foreman to put off lights and fans which were in the production section where the Party I was posted. The Party I did not put off the lights and fans before he left the premises. He committed the same act again on 2-12-1989. Therefore, the Party II by issuing the show cause notice dated 6-12-89 informed the Party I that such acts committed by him are highly objectionable amounting to misconduct. The Party I was called upon to explain as to why disciplinary action should not be taken against him. Explanation submitted by the Party I to this show cause notice and which is dated 7-12-89 is at Exb. E-7. The Party II under its letter dated 8-12-89 cautioned the Party I that any repetition of such or similar acts will be viewed seriously. Carbon copy of the letter is at Exb. E-8. The Party II by sending letter on 12-3-90 informed the Party I that he was habitually late in attending work. He was advised to be punctual in attendance. It was made clear in this letter that repetition of late attendance will make liable for disciplinary action. The letter is at Exb. E-9. The Party II by sending letter on 28-3-90 informed the Party I that although he was absent in afternoon session on 26-3-90, he marked his attendance which amounts to misconduct and in interfering with records of attendance. He was advised to refrain from repetition of such or similar misconducts in future. Carbon of the letter is at Exb. E-10. Again, a charge-sheet was issued against the Party I on 8-12-1990. Carbon copy of the charge-sheet is at Exb. E-11. It appears therefrom that, there were allegations of disobedience of any lawful and or reasonable orders of the superiors, disorderly or indecent behaviour or use of abusive language, commission of any act subversive of discipline or good behaviour and of loitering and wasting of time during working hours, against the Party I. He was called upon to explain as to why action should not be taken against him for such misconduct. Carbon copy of the charge-sheet is at Exb. E-11. The Party II under its letter dated 11-5-91 informed the Party I that though the misconduct committed by him is of serious nature. The Party II decided to impose lesser punishment in the form of suspension without wages for ten days. The Party I under this letter was called upon to show cause as to why such punishment should not be imposed upon him. Carbon copy of the letter is at Exb. E-12. The Party I by sending letter on 31-5-1991 agreed to such punishment. The letter is at Exb. E-13. Pursuant to this letter, the Party II imposed upon him punishment of suspension without wages for 10 days from 3-6-91 to 12-6-91. Carbon copy of the suspension order dated 31-5-91 is at Exb. E-14. It reveals from all these incidents that the Party I was involved time and again in the acts amounting to misconduct or misbehaviour and that inspite of giving opportunities from time to time, he did not make improvement in him behaviour. If all these incidents coupled with finding recorded by the Inquiry Office are taken into consideration, it can safely be said that the punishment which is in the nature of termination of service imposed on the Party I is commensurate with his guilt. I do not agree with argument advance by the learned Advocate of Party I. In view of this reason above discussion and of finding given on the preliminary issue numbers 1 and 2, I hold that the termination of the service of Party I cannot be said to be illegal and unjustified. My answer to the issue is in negative.

21. *Issue No. 4:-* Section 11-A of the Industrial Disputes Act, 1947 lays down powers of Labour Courts, Tribunals and National Tribunals to give appropriate relief in case of discharge or dismissal of workman. The powers are alternative. If the Tribunal is satisfied that the order of discharge or dismissal is unjustified, it may set aside that order and direct the reinstatement of the workman on terms like with backwages or without backwages or with any part of the backwages. It may also award compensation in lieu of the reinstatement if the circumstances of the case justify such compensation or it may give any other relief to the workman including award of any lesser punishment. Factory of the Party II is closed since last one and half years. This fact is admitted by Party I in his cross examination

(Exb. 15). Now, it is impossible to reinstate the Party I in the service of the Party II. From the provision contained in Section 11-A of the said Act, 1947, it can be seen that the workman is entitled to the reliefs under this section only if it is proved that, discharge or dismissal is unjustified. In the present case, termination of service of Party I is not proved to be illegal and unjustified. I, therefore, answer the issue in negative.

As a result of finding given to issues number 3 and 4, I proceed to adjudicate the reference by passing order as follows:-

ORDER

1. The action of the management of M/s. Goa Electronics Limited, Mapusa Industrial Estate, Mapusa, in terminating the services of Shri Rajendra B. Harmalkar/Party I w.e.f. 28-9-1992 is legal and justified.
2. The Party I is not entitled to any of the reliefs claimed by him.
3. No order as to costs.
4. Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-Cum-
-Labour Court-I.

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Notification

No. 28/18/2007-LAB/920

The following Award passed by the Industrial Tribunal of Goa, at Panaji-Goa on 6-8-2007 in reference No. IT/1/93 is hereby published as required by Section 17 of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

By order and in the name of the Governor of Goa.

Hanumant T. Toraskar, Under Secretary (Labour).

Porvorim, 23rd August, 2007.

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IN THE INDUSTRIAL TRIBUNAL-CUM-LABOUR COURT-I AT PANAJI

(Before Shri Dilip K. Gaikwad, Presiding Officer)

Case No. IT/1/93

Shri Austin I. Fernandes,
E3/82, Murdavaddy,
Saligao,
Bardez-Goa. 403 511. ... Workman/Party I

V/s

The Manager (Personnel & Administrative),
M/s. E. Merck (India) Limited,
Plot No. 11/1,
Marwasodo, Usgaon,
Ponda-Goa. 403 407. ... Employer/Party II

Workman/Party I represented by Representative Shri K V. Nadkarni.

Employer/Party II represented by Adv. Shri G. K. Sardessai.

AWARD

(Passed on this 6th day of August, 2007)

This is a reference under Section 10(1)(d) of the Industrial Disputes Act, 1947 (hereinafter in short referred to as the said Act, 1947).

1. Facts of the present reference, stated in brief, are as follows:

The Government of Goa in exercise of powers conferred on it by Section 10(1)(d) of the said Act, 1947, under Order dated 24-12-1992 has referred to this Industrial Tribunal following dispute for adjudication:-

(i) Whether Shri Austin Fernandes, Shift Supervisor of the management of M/s. E-Merck (India) Ltd., Usgao, Goa is a workman under Sec. 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).

(ii) If so, whether the action of the management of M/s. E-Merck (India) Limited, Usgao, Goa in terminating the services of Shri Austin Fernandes, Supervisor, w.e.f. 2-7-1992 is legal and justified.

(iii) If the answer to (2) above is negative, to what relief the workman is entitled ?

2. In response of notice, both parties put their appearance in this Industrial Tribunal. The Party I presented his claim statement on 19-1-1993 at Exb. 3. It appears from claim statement that the Party I was appointed as Shift Supervisor on consolidated salary of Rs. 850/- p.m. in establishment of the Party II w.e.f. 27-5-1991. It was the Supervisory Grade-I post. The appointment letter is dated 14-5-1991. The Party I was confirmed in service by the Party II under its letter dated 14-2-1992. Service of the Party I was initially governed by the contract of service and Service Rules, and subsequently by Certified Standing Orders issued by the Party II. Work of the Party I as a Shift Supervisor was mainly technical and operational in nature. He was looking after maintenance of the Plant and was carrying out modifications, replacements and repairs etc., with consultation and with prior approval of the Chief Engineer of the Party II. He was doing the same work till the date of termination of his service. He was discharging his duties sincerely. His service record is clean and unblemished. To his surprise, he received letter dated 2-7-92 from the Party II informing him that his service is terminated with immediate effect in terms of appointment letter dated 27-5-1991. The

Party II neither served charge-sheet on him nor held departmental inquiry against him. He was not given sufficient opportunity. Termination of his service by the Party II is illegal, unjust and against principles of natural justice. He sent letter on 9-7-1992 to the Director and Secretary of the Party II and requested them for revocation of termination order and for allowing him to join his duties with immediate effect. The Party II did not give response to his request letter. Therefore, he raised a dispute before the Labour Commissioner. The Party II inspite of giving sufficient opportunity did not file Written Statement in the conciliation proceedings. Because of non co-operation of the Party II, conciliation proceedings held by the Labour Commissioner resulted in failure. Thereafter, the Government of Goa by its order dated 24-12-1992 has referred to this Industrial Tribunal the dispute for adjudication as stated earlier.

3. The Party I by presenting the claim statement has prayed for holding that the action of the Party II in termination of his service by the Party II is illegal, unjustified and bad in law, and for order directing the Party II to reinstate him in the service w.e.f. 2-7-92 with full backwages and with continuity in service.

4. The Party II resisted the claim statement by filing its written statement on 28-1-1993 at Exb. 4. The Party II admitted that the Party I was appointed as Shift Supervisor in its factory at Usgao w.e.f. 27-5-1991 and that the Party I was confirmed in service w.e.f. 27-11-1991. Further, it appears from written statement that the Party I was never governed either by Service Rules or by Certified Standing Orders related to non management cadre. The Party I as a Shift Supervisor carried out supervisory duties. He supervised work of his sub-ordinates. He was part of management cadre. The Party I is not a 'workman' as defined under the Industrial Employment Standing Orders Act, 1946, and also under Section 2(s) of the said Act, 1947, by virtue of his appointment as Shift Supervisor as well as by virtue of the salary which he was getting more than Rs. 1,600/- p.m. Therefore, the reference is not maintainable.

5. According to the Party II, it received report disclosing that the Party I is involved in acts of sabotaging cordial relations existing between its management and workmen. The Party I was instigating the workmen and non workmen against its management with a view to refrain from discharging their normal duties. It lost confidence in the Party I. On 4-7-92 at about 7.50 a.m., the Party I and another employee Naguesh Priolkar instigated management staff of the Supervisor Cadre, as a result, the management staff held a demonstration of protest outside gate of the factory against termination of service of the Party I. Only because of conduct of the Party I, it reached to conclusion that it will be against interest of discipline and smooth functioning of the factory to retain the Party I in service. Therefore, it terminated service of the Party I by its letter dated 2-7-92. The termination is simplicitor and attaching without any stigma. The termination is not punitive in nature. Since service conditions, service rules and certified standing orders were not applicable to the Party I, it was not necessary to issue charge-sheet or to hold departmental inquiry against him. Termination of his service is legal and justified. No sufficient opportunity was given to it in conciliation proceeding held by the Labour Commissioner. There was no sufficient material before the Labour Commissioner to record failure of the conciliation proceeding. On these and the above grounds, it has prayed for rejection of the reference.

6. The Party I submitted its Rejoinder on 15-3-1993 at Exb. 5, which runs into ten typed pages. In short, it appears from the Rejoinder that all contentions which are raised by the Party II in its written statement and which are adverse to the interest of Party I are denied in seriatim by him. It is needless to reproduce the denials. In addition to the denials, he strictly adhered to his claim which is made out in the claim statement. He is claiming that he is a workman as defined under the said Act, 1947, and that he is entitled to the benefits as claimed.

7. On basis of pleadings, the then learned Presiding Officer framed issues on 7-4-1993 at Exb. 6. The issues are as follows:

1) Does Party No. 1 Mr. Austin Fernandes prove that he is a workman as defined in Section 2(s) of the Industrial Disputes Act?

2) If yes, does he prove that the action of the management of Party No. II in terminating his services w.e.f. 2-7-92 is not legal and just?

3) If yes, is Party No. 1 entitled to any relief?

4) What Award and order?

8. The then learned Presiding Officer who has framed the above issues treated the Issue No. 1 as preliminary issue. Accordingly, both the parties have led evidence on issue No. 1. Therefore, I am going to record my finding only on issue No. 1 which is the preliminary issue, as follows:-

Issue No. 1: In the negative.

REASONS

Before proceeding further it is necessary to make it clear that if answer to the preliminary issue is in negative, in that case, questions as to whether the action of management of Party II in terminating his service is legal and justified and as to whether he is entitled to any relief will not survive and as such entire reference will have to be disposed off by passing Award.

9. *Issue No. 1:* The Party II had given to the Party I offer of appointment on 14-5-1991 as Shift Supervisor w.e.f. 25-5-1991. Xerox copy of the letter containing offer of the appointment is at Exb. W-1. The Party I joined service as Shift Supervisor in establishment of the Party II w.e.f. 27-5-1991. The Party II gave letter of appointment alongwith copy of Service Rules. Xerox copies of the appointment letter dated 17-6-1991 is

at Exb. W-2. Relevant page of the Service Rules is at Exb. W-3. The Party I was confirmed in the service w.e.f. 27-11-1991. Xerox copy of confirmation letter dated 14-2-1992 is at Exb. 4. Copy of Certified Standing Order which was supplied alongwith the confirmation letter to the Party I is at Exb. W-5.

10. The Party I examined himself at Exb. 12. It appears from his evidence that he is Diploma holder in Mechanical Engineering. As a Shift Supervisor he was working in Maintenance/Utility Section. He was doing work of looking after Maintenance Section and Operation of the plant which included replacement of parts of the machinery and of carrying out modifications of the machinery with due approval and consultation of Shift Executive and Chief Engineer. Besides it he was maintaining history cards of machinery. The history cards show details regarding nature of the work carried out by him on machinery and also of replacement of parts of the machinery, modification done from time to time in the machinery installed in the plant. He has produced xerox copies of history cards at Exb. W-6 colly. The history cards are in his handwriting. He was preparing statements from time to time showing details as regards type of the work carried out by him on a particular machine. These statements consisting of twenty-nine pages are produced by him at Exb. W-7 colly. He was preparing statements regarding fuel utilized in the plant at the end of every month. He has produced xerox copy of such statement for the year 1991-1992 at Exb. W-8. Store section was informing him at the beginning of the month about receipt of furnished oil and diesel. He was checking how much furnished oil and diesel is utilized in every month. Sometimes he was recording reading of thermopac machinery in the form of thermopac daily log sheet. He has produced the xerox copies of the log sheets dated 25-5-1992, 20-5-1992, 12-5-1992 and 21-1-1992 at Exb. W-9 colly. He was recording reading of chiller plant also of the Party II in log-sheets known as chiller plant log-sheets. He produced xerox copies of the chiller plant log-sheets dated 12-5-1992, 25-5-1992, 31-5-1992, 2-4-1992, 4-4-1992, 13-4-1992, 15-4-1992, 20-4-1992, 23-4-1992, 24-4-1992, 16-3-1992, 22-3-1992, 24-2-1992 and dated 21-1-1992 at Exb. W-10 colly. He has prepared daily reports in respect of work done by him as Shift Supervisor. Xerox copies of the said reports for the period from 10-8-1991 to 26-2-1992 are produced at Exb. W-11 colly. He was doing manual work. Besides it, he was doing work of maintaining machinery, installing new machinery and of charging and checking oil levels. Executive in-charge of the department was taking decision regarding replacement of the parts of the machinery. Production Manager and Chief Engineer were taking decision regarding modification of the machinery.

11. Evidence of the Party I further shows that he had no powers to take any disciplinary action or to issue a memo against any workmen. He had no power to take financial decision on behalf of the Party II. He had no powers to recruit any person. Whenever he has done work more than duty hours he is paid with overtime wages.

12. The Party II examined its Works Manager, Prabhakar Mallya at Exb. 13. He pointed out in his evidence that the Party I was working as a Supervisor in establishment of the Party II. Duties of the Supervisors were to look after day to day activities of the engineering section, to go through log-sheets of boiler and other utilities, to authorize overtime, to issue exit passes, to recommend leave of, to distribute work and to supervise over the work of mechanics and helpers. The Supervisors were provided with the tables and chairs. He further pointed out that employees who are of supervisors, executive and management categories are not covered by settlement which took place between the Party II and its workmen.

13. The Party I is claiming to be a workman as defined under Section 2(s) of the said Act, 1947, while the Party II is claiming that the Party I is not a workman but a supervisor. Therefore, it becomes necessary to have reference of the provisions contained in this Section which defines a "workman". The provision runs as follows:

> *"workman means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceedings under this Act, in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person—*
>
> *(i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957);*
>
> *(ii) who is employed in the police service or as an officer or other employee of a prison; or*
>
> *(iii) who is employed mainly in a managerial or administrative capacity; or*
>
> *(iv) who, being employed in a supervisory capacity draws wages exceeding one thousand per mensem or exercises either by the nature of the duties attached to the office or by reason of the powers vested in him, functions mainly of managerial nature."*

14. Representative of the Party I argued that, service of the Party I was initially governed by Service Rules, and thereafter by Certified Standing Orders applicable to all workmen employed in establishment of the Party II to do manual, technical and supervisory work. When the Party II has made the Service Rules and Certified Standing Orders to the workmen doing supervisory work also, according to him, the Party II cannot take summersault and say that the Party I is not the workmen. In support of his argument, he relied upon Service Rules and Certified Standing Orders of the Party II and upon decisions given by the Hon'ble High Court of Madras in case of *Shaw Wallace Company*

Ltd. v/s Presiding Officer Second Additional Labour Court, Madras and Shri A. T. Jeyadoss, reported in 2002 (1) L.L.N. 317 and by the Hon'ble High Court of Calcutta in case of *Monoranjan Chakrabortty and State of West Bengal reported in 2002 (2) L.L.N. 579.*

15. Rule 1 of the Service Rules lays down that—

> *"these service rules shall apply to all workmen employed in the establishment to do manual, technical and supervisory work."*

16. Certified standing orders applicable to the workman of the Party II and which are approved by Assistant Labour Commissioner and Certifying Officer, Panaji, Goa on 3-4-1984 are produced at Exb. W-5. Clause 1 of the Certified Standing Orders runs like this—

> *"these orders shall apply to all workmen employed in the establishment to do manual, clerical, technical and supervisory work."*

17. In case of *Shaw Wallace and Company Ltd.,* charges were issued against second respondent/employee for various misconduct, inter-alia of assaulting co-employee being in a drunken state while on duty and for absence from factory for long hours. Disciplinary proceedings were initiated against him considering him to be a workman under Section 2(s) of the Industrial Disputes Act, 1947. He was dismissed after inquiry. It was contention of the management in a reference before Labour Court that the second respondent was supervisor and not workman. The Labour Court held that the second respondent was workman and modified the punishment of dismissal into one of reduction in wages for a period of one year and directed reinstatement. The management took up the matter before the Hon'ble High Court on Writ Petition. The Hon'ble High Court held that:

> *"If the management takes disciplinary actions for alleged misconduct enumerated under the Certified Standing Orders treating the delinquent employee as a workman, subsequently the management is esstopped from taking a stand before Labour Court that he is not a workman."*

18. In case of *Manoranjan Chakrabortty* the petitioner/ /workman was a supervisor in the services of the third respondent. His service was terminated after he was found guilty of misconduct in departmental inquiry. There was a reference before the Industrial Tribunal. It was held by the Industrial Tribunal that the reference was not maintainable as petitioner was not a workman under the said Act, 1947. The petitioner challenged the Award. There was no evidence to show that the petitioner was controlling the work of the subordinates. The domestic inquiry which was held against him was under the standing orders of the company. The Hon'ble High Court of Calcutta held that:

> *"The company way stopped from taking a stand that petitioner was not a workman after having held a domestic inquiry against him under the standing orders of the company and that the petitioner is a workman within the meaning of the Act."*

19. In the present case there is no evidence to show and it is also not a case of any of the parties that action was taken at any time against the Party I under the Service Rules and/or under Certified Standing Orders of the Party II. This is the material fact which is clearly distinguishable from the reported cases referred to above. With respect, I am of the opinion that, the decisions relied upon by the representative of the Party I from these two reported cases are not applicable to the present case.

20. The representative of the Party I further argued that if the duties which are enumerated by the Party I in his evidence are taken into consideration, it clearly emerges there-from that the Party I was doing duties of technical and operational nature which come within the purview of Section 2(s) of the said Act, 1947. Therefore, he submitted that the Party I will have to be held a workman. To substantiate his argument, he relied upon various decisions which are necessary to be referred. The Hon'ble Supreme Court held in case of *Arkal Govind Raj Rao v/s Ciba Geigy of India Ltd.,* Bombay decided on 6-5-1985 (Civil Appeal No. 2638/ /1980) that:

> *"when an employee has multifarious duties and a question is raised whether he is a workman or not the Court must find out what are the primary and basic duties of the persons concerned and if he is incidentally asked to do some other work, may not necessarily be in tune with the basic duties, these additional duties cannot change character and status of the person concerned. In other words the dominant purpose of the employment must be first taken into consideration and the gloss of some additional duties must be rejected while determining the status and character of the person."*

21. In the above reported case the appellant joined service of the company as Stenographer-cum-Accountant w.e.f. 18-1-1956. He was appointed as Assistant and continued to render service in that post till his services came to be terminated on 10-10-1972. The appellant raised a dispute before Deputy Commissioner, Bombay, who in turn, made reference to the Labour Court Bombay. One of the objections raised by the employer company was that the appellant is not a workman within the meaning of the expression in the said Act, 1947. The Labour Court held that even though the appellant was doing some clerical work he was also doing supervisory and administrative work and other work of checking bank reconciliation etc., which was not the clerical work and therefore he was not workman. The appellant filed Writ Petition in the Hon'ble High Court, Bombay. The Writ Petition came to be dismissed in lime line. The appellant took up the matter before the Hon'ble Supreme Court on appeal by special leave. The Hon'ble Supreme Court quashed and set aside award passed by the Labour Court and judgment of the Hon'ble High Court.

22. In case of *Ved Prakash Gupta v/s M/s. Delta Cable India (P) Limited* decided by the Hon'ble Supreme Court on 8-3-1974 (Civil Appeal No. 1673/1982) substantial duty of the appellant was only that of a security Inspector at the gate of the factory premises and that it

was neither managerial nor supervisory in the sense in which those terms are understood in industrial law. The Hon'ble Supreme Court held that the appellant clearly falls within the definition of a workman in Section 2(s) of the said Act, 1947.

23. The Hon'ble Supreme Court held in case of *H. R. Adyanthaya etc. etc., appellants v/s Sandoz (India) Limited etc. etc., respondents, reported in 1994 II CLR 552* that:

> *"a person to be a workman under the Act must be employed to do the work of any of the categories viz. manual, unskilled, skilled, technical, operational, clerical or supervisory and it is not enough that he is not covered by either of the four exceptions to the definition."*

In the above reported case the employees were medical representatives as commonly known. The Hon'ble Supreme Court held that the medical representatives are not workman within the definition of the Section 2(s) of the Act.

24. In case of *S. A. Sarang Petitioner v/s W. G. Forge and Allied Industries Limited Thane and others, respondents, reported in 1995 I CLR 837,* evidence on record was equivocal and was not clinchingly indicating nature of work done by petitioner. All documents produced by first respondents did not definitely show that the petitioner was employed as a supervisor. The oral evidence was equally ambiguous. The employer himself treated the employee as a person covered by Model Standing Orders which are undisputedly applicable to workmen. With this background of the facts the Hon'ble High Court pleased to hold that the petitioner is a workman under Section 2(s) of the Industrial Disputes Act, 1947.

25. In case of *C. Gopinath Pillai Petitioner v/s Thermax Limited and others, respondents, reported in 2005 I CLR 345,* the petitioner was doing operational work, organizing seminars, performing work of an assessor and of co-ordinator falling within the parameters of operational work. The Hon'ble High Court held that the petitioner is a workman.

The Hon'ble High Court of Bombay in the above reported case reproduced from the 1996 Edition of the Chambers Dictionary, meaning of the words 'Operational' and 'Operation' as follows:-

> *"Operational means relating to operation, ready for action, operation means the act or process of operating, something which is done or carried out, agency, influence, a method of working an action or series of movements, a surgical procedure, especially in military or surgical sense."*

26. The Hon'ble High Court of Bombay held in case of *George Thomas Thakkeyil, petitioner v/s Sci-tech Centre, respondents, reported in 2007 II CLR 185* that—

> *"if an employer continuously and consistently proposes and takes action against its employee on the footing that he is covered by the model standing orders (thereby implying that the employee is a "workman" within the meaning of the Act) then such employer must be estopped from denying the said fact when a dispute regarding the dismissal of the employee finally lands up before an industrial adjudicator."*

27. The Hon'ble Supreme Court in case of *National Engineering Industries v/s Shri Kishan Bhagaria and others, reported in 1989 I CLR 290* has referred to definition of supervisor in Black's Law Dictionary Special Deluxe Vth edition. This definition is reproduced by the Hon'ble High Court of Bombay in case of *Cricket Club of India and others, petitioner v/s Balajit Sham (M/s.) and another, respondents, reported in 1998 I CLR 570.* The definition is as follows:

> *"in a broad sense one having authority over others, to superintend and direct. The term supervisor means any individual having authority in the interest of the employer to hire, transfer, suspend, lay off, recall, promote, discharge, assign, reward or discipline other employees or responsibility to direct them or to adjust their grievances, or effectively to recommend such action if, in connection with the foregoing the exercise of such authority is not of a merely routine or clerical nature, but requires the use of independent judgment."*

In the above reported case the respondent No. 1 joined service of the petitioner as a house keeper. Later on she was confirmed in the service. She was supervising functions of persons working in the club. She was recommending leave applications. She had no powers to take decision. Letter of appointment stated that she would be governed by model standing orders. No material was produced to show that she was doing work mainly of supervisory nature and that she could bind the company by taking decision on behalf of the company. Considering all these circumstances the Industrial Court held that the respondent No. 1 was workman. This decision is up held by the Hon'ble High Court Bombay.

28. In case of *U. P. State Sugar Corporation Ltd., Petitioner v/s The Deputy Labour Commissioner, Meerut and others, Respondents, reported in 1990 (I) CLR 330,* respondent No. 1 was Assistant Engineer in State Sugar Corporation Ltd. His work was of technical in nature and he merely looked after the work of the workmen under him and as well as the concerned machines. He did not allocate jobs to the workmen. This work was done by Manager or the Chief Engineer. He had no power to sanction leave to any of the workmen working under him nor did he exercise any disciplinary control over the workmen. The Hon'ble High Court of Allahabad held in this case that the Assistant Engineer in State Sugar Corporation is a workman as defined in Section 2(s) of the Industrial Disputes Act, 1947.

29. Learned advocate of the Party II in reply argued that the Party I was appointed as the Shift Supervisor in establishment of the Party II. It is admitted by the Party II in his cross examination that the employees whose names are shown in the Shift Schedule (Exb. 3, colly) were occupying position of supervisory category. Name of the Party II was also shown in the Shift Schedule. The Party I had an authority in respect of overtime wages to the employees shown in overtime

wages statement. The Party I has recommended leave requested for by workman. The Party I has signed exit pass. The Party I was getting wages more than Rs. 1600/- per mensem. If all these circumstances are considered together, net result which emerges there from is that the Party I was the Supervisor. Therefore, according to him it cannot be said that the Party I is a workman. He also relied upon various decisions from reported cases which I am going to refer.

30. The Hon'ble High Court of Bombay in case of *Vinayak Baburao Shinde, Petitioner v/s S. R. Shinde, Members Industrial Court, Thane and two others, respondents, reported in 1985 I CLR 318* explained meaning of "supervise" as follows:

> *"the word 'supervise' means to oversee, that is, to look after the work done by the persons. The word "supervision" occurring in Section 2(s) of the Industrial Disputes Act, means supervision in relation to work or in relation to persons. The essence of supervision consists in overseeing by one person over the work of others. This also involves a power in the person overseeing to direct and control the work done by the persons over whom he is supervising. In an industrial establishment normally there are three layers of work. One is the clerical or the manual work which is done by the workman, the second is the supervisory work done by a supervisor, and at a higher level is the work of a Manager."*

31. In the reported case referred to above petitioner was Supervisor. He was drawing wages exceeding Rs. 1000/- per month. The Hon'ble High Court Bombay held that the petitioner is not a workman within the meaning of Section 2(s) of the Industrial Disputes Act.

32. The Hon'ble High Court of Bombay held in case of *John Joseph Khokar petitioner v/s B. S. Bhadange and others, respondents, reported in 1998 (2) Bom. C. R. 174* that—

> *"question whether a worker was working in supervisory capacity or working as a workman would depend on facts of each case. Mere designation or incidental work done by him would not be deciding factor. If employee's principal job is to oversee work of juniors and has some sort of independent discretion and judgement, he can be termed as supervisor."*

33. In the reported case referred to above the employee/petitioner was overseeing work of 29-30 workmen. He was distributing work to them. He was giving instructions and demonstration etc., when necessary. He was following up all jobs under his charge and was ensuring that the work progresses satisfactorily. He was also ensuring that the correct tools and material are available to the workmen under him as required and that the work is being carried out by them correctly according to his instructions. In view of this matter, the Hon'ble High Court held that the finding recorded by the industrial court that the petitioner is not workman cannot be faulted.

34. The Hon'ble High Court of Bombay held in case of *Shrikant Vishnu Palwankar v/s Presiding Officer, I Labour Court and another, reported in 1992 II LLJ 378* that, recommendation of leave is one index of supervisory function.

35. The Hon'ble High Court of Bombay in case of *Union Carbide (India) Ltd., and D. Sammuel and others, reported in 1998 (80) FLR 684* laid down tests to determine as to whether employee is a supervisor or a workman. These tests are as follows:

(a) whether the employee can examine the quality of work and whether such work is performed in satisfactory manner or not;

(b) does the employee have powers of assigning duties and distribution of work;

(c) can he indent material and distribute the same amongst the workmen;

(d) even though he has no authority to grant leave, does he have power to recommend leave;

(e) are there persons working under him;

(f) has the power to supervise the work of men and nor merely machines;

(g) does he mark the attendance of other employees;

(h) does he write the confidential reports of his subordinates.

36. The Hon'ble Supreme Court in case of *Burmah Shell Oil Storage and Distributing Company of India Ltd., v/s The Burmah Shell Management Staff Association and others, reported in 1971 SC 922* in determining nature of employment of an employee and in holding that the employer is employed to do supervisory work, took into consideration not only the work of supervision which he was carrying on in ensuring that the skilled and unskilled manual workmen employed under him were properly doing work of repairs, maintenance, servicing and fabricating etc., but also the fact that the workmen functioned under his control and directions that he allocated and re-allocated work to them and that he initiated disciplinary proceedings etc. The Hon'ble Supreme Court further held that the exercise of such powers is clearly a part of his supervisory duty.

37. The Hon'ble High Court of Bombay at Goa in Writ Petition number 167/1999 which was between *Vishnu P. Kamal v/s Presiding Officer, Industrial Tribunal, Panaji, Goa and one another,* decided on 2-7-1999 and of which xerox copy is placed before me by learned advocate of the Party II, held that the petitioner was interested with duties of sanctioning of leave of operators, checking of production, stoppage of machinery if the product was found not up to the mark etc. and that these duties are certainly of supervisory nature.

38. The Hon'ble High Court of Bombay held in case of *Apparao Basavannappa Manore v/s M/s. Wendleside National Conductors Ltd., and Others,* that merely because the petitioner who was working in supervisory capacity was collecting and assessing data, it cannot be said that he was a clerk and a workman.

39. The Hon'ble High Court of Gujrat held in case of *Ummakant S. Deshpande v/s Gujarat Electricity Board* that, Accounts Officer performing supervisory work and also receiving more than Rs. 1600/- per month is not workman within meaning of Section 2(s) of Industrial Disputes Act, 1947.

40. The position that emerges from the above said discussion is that in determining the question whether a person employed by the employer is workman under Section 2S(s) of the said Act, 1947 or not, the Industrial Tribunal has principally to see main or substantial work for which the employee had been employed and engaged to do. Neither the designation of the employee is decisive nor any incidental work that may be done or required to be done by such employee shall get him outside the purview of workman if the principal job and the nature of employment of such employee is manual, technical or clerical. Each case would depend on nature of the duties predominantly or primarily performed by such employee and whether such function was supervisory or not would have to be decided on the facts keeping in mind correct principles led down by the various authorities referred to above.

41. Appointment letter dated 17-6-1991 (Exb. W-2) speaks in clear terms that the Party I was appointed as Shift Supervisor in Supervisory Grade-I in Engineering Department of the Party II. This appointment letter is silent in respect of main or substantial work, if any, for which the Party I had been employed and engaged to do. The Party I admitted in his cross examination that he was not member of any Union, that, he was working as a Shift Supervisor in establishment of the Party II, that, he had authorized overtime wages to workmen whose names are stated in statement of overtime wages and of which xerox copies are produced at Exb. W-4 colly, that authorization of the overtime wages by him was as per procedure, that the overtime wages were authorize to utility mechanics and/or helpers, that, he was signing exit passes in case if they were required by utility mechanics or helpers to leave factory premises before schedule time, and that, he forwarded leave applications. He further goes on admitting that he has signed in a column "recommended by" provided in the leave applications. It follows that he had authority to recommend leave applications of workmen working under him that is, of utility mechanics and of helpers. Further, it reveals from his evidence that, the utility, mechanics and helpers were working under him. Otherwise there was no reason for him to authorize their overtime wages and to recommend their leave applications. If all these facts taken into consideration together with the tests which are laid down by various authorities cited above to determine as to whether the employee is a supervisor or workman, in my view there is no alternative but to draw a irresistible conclusion that the Party I was the supervisor and that he was discharging duties of the supervisor in establishment of the Party II. He was getting wages Rs. 2601/- per mensem. In this connection, reference of xerox copy of the pay slip issued in the name of the Party I for the month of June, 1992 can conveniently be made. It follows that he was getting wages more than Rs. 1600/- per mensem. He is covered by Clause (iv) which is under Section 2(s) of the said Act, 1947 and which excludes and employee from definition of the 'workman'. Evidence led by the Party II and argument advanced by its learned advocate appears to be more probable and convincing.

42. Representative of the Party II by placing reliance on Certified Standing Orders of the Party II, submitted that the Certified Standing Orders are made applicable to all workmen doing manual, clerical, technical and supervisory work. Therefore, according to him, even if it is proved that the Party I was doing supervisory work, the Party I will have to be treated as workman.

43. It is true that Certified Standing Orders are made applicable by the Party II to its employees doing manual, clerical, technical and supervisory work. There is a provision in the shape of Clause (iv) under Section 2(s) of the said Act, 1947 which excludes the person who is employed in supervisory capacity and who is drawing wages exceeding one thousand six hundred rupees per mensem. When there is such specific provision in the Act itself, anything which is contrary cannot be accepted. I, therefore, do not agree with case made out by the Party I and also with elaborate exercise made by his representative. My answer to the issue is in negative.

44. The Party I is not proved to be a workman within the meaning of Section 2(s) of the said Act, 1947. Dispute as to whether action of the Party II in terminating service of the Party I is legal and justified, does not survive. The Party I is not entitled to any of the reliefs under the Industrial Disputes Act, 1947. With this I proceed to adjudicate the reference by passed order as follows:-

ORDER

1. Shri Austin Fernandes, Shift Supervisor of the Management of M/s. E-Merck (India) Ltd., Usgao, Ponda-Goa, is not a workman under Section 2(s) of the Industrial Disputes Act, 1947 (Central Act 14 of 1947).
2. Dispute as to whether action of the Management of the M/s. E-Merck (India) Ltd., Usgao, Ponda in terminating the services of Shri Austin Fernandes, Supervisor w.e.f. 2-7-1992, does not survive.
3. The Party I Shri Austin Fernandes, Supervisor, is not entitled to any of the reliefs claimed by him.
4. No order as to costs.
5. Award be submitted to the Government of Goa as per provisions contained in Section 15 of the Industrial Disputes Act, 1947.

Sd/-
(Dilip K. Gaikwad),
Presiding Officer,
Industrial Tribunal-Cum-
-Labour Court-I.

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